Having regard to the background of the said land, it is clear that the express condition imposed had been accepted by the proprietor of the land, which had made all the payments which were required for the said approval. Having regard to all these facts the Land Administrator, District of Gombak, had issued an order for the value of compensation as recommended by the Selangor Valuation Department, ie $10 be awarded as nominal compensation to the proprietor of the land.

The submission of counsel for the respondent is that because acquisition had been made under the Land Acquisition Act 1960, compensation must be made in accordance with the market value. Based on this submission, the judge had agreed to award the compensation as stated above.

We are of the opinion that the judge of the High Court has failed to apply the true principle of compensation. The relevant principle concerning compensation is well settled, that is the compensation awarded should as far as practicable place the claimant in the same financial position as he would have been in had there been no acquisition of the land. This principle is stated in the text book *Compulsory Acquisition and Compensation* by Sir Frederick Corfield QC and RJA Carnwath at p 161 as follows:

> The basic principle of the law of compensation is that the sum awarded should as far as practicable place the claimant in the same financial position as he would have been in had there been no question of his land being compulsorily acquired. [Original text.]

Applying the above principle to the present case we are of the opinion that it is not proper for the proprietor of the land to submit that it must be awarded compensation according to the market value. It is clear to us that the proprietor of the land must not be allowed to deny the express condition which it had accepted when receiving the approval for the change of condition of the said land. It is clear that the approval permits the said land to be used for light industrial buildings in accordance with the site plan as certified by the Director of Town and Country Planning, state of Selangor. The site plan prepared by the respondent itself had also been approved by the said department and the relevant government departments and agencies and the plan had also been registered on 11 December 1985 as plan no JPBK/B11/98/85/PD. The land acquired is reserved land in the said plan in accordance with the condition as stated above.

The meaning of 'market value' under s 1 of the First Schedule to the 1960 Act is inapplicable to the said land in view of the facts of this case, ie the date of declaration of the acquisition (31 July 1986) is after the date of the imposition of the condition (26 April 1985) and the date when the approved plan was registered (11 December 1985).

We are of the opinion that the High Court judge had erred when he accepted the denial of the condition by the proprietor of the land.

Accordingly this appeal is allowed and we restore the order of the Land Administrator, District of Gombak.

Costs of the appeal and costs in the High Court will be paid by the respondent.

Appeal allowed.

Solicitors: *AJ Ariffin, Chong & Harpal.*

Judgment translated by *Wong Kim Fatt*

Draman bin Kassim v Land Administrator, District of Hulu Terengganu

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 01-5-1989
HASHIM YEOP A SANI CJ (MALAYA), HARUN HASHIM AND JERMURI SERJAN SCJJ
28 AUGUST 1990

Land Law — Land acquisition — Compensation — Comparison with other lands — Interest — Costs — Land Acquisition Act 1960, ss 8, 48 & 51

This was an appeal against the decision of the High Court in Kuala Terengganu in regard to the compensation payable for land required by the government. The effective date of the acquisition of the land was 29 January 1981. The government had paid compensation of $4,800 per acre to the appellant. In the High Court, it was held that the compensation should be increased to $7,000 per acre. The appellant in his appeal stated:

(a) that he was not satisfied with the reason given by the High Court in rejecting the comparison with the value of lots 8 and 454 in the same district, which had been sold for a higher value;
(b) that the learned judge had failed to use his discretion to award interest;
(c) that the appellant was not satisfied in being asked to pay the costs of the assessors.

The learned trial judge had rejected the comparison with the two lots as he held that they were not comparable.

Held, allowing the appeal in part:

(1) Having considered all the circumstances of the case, the court held that there was no reason to interfere with the award of compensation of $7,000 per acre given by the High Court and therefore the appeal in regard to the compensation was dismissed.

(2) The learned judge did not exercise his discretion to award interest and therefore the appeal in this aspect should be allowed and an order made for the payment of interest at the rate of 6% from the date of acquisition to 19 January and 8% from 20 January till the date of payment.

(3) The judge has a discretion in regard to costs especially where the claim is 20% above the compensation awarded by the court and in this case the appeal in regard to costs is dismissed.

Case referred to

1 *Re Lucas and Chesterfield Gas and Water Board* [1909] 1 KB 16 (refd)

Legislation referred to

Land Acquisition Act 1960 ss 8, 48, 56

Wan Abdul Mutalib for the appellant.

Abdul Kadir bin Musa (State Legal Advisor, Terengganu) for the respondent.

Cur Adv Vult

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): This appeal arose out of a compensation determined by the High Court of Kuala Terengganu in the acquisition of a piece of land lot G 892 in the mukim of Kuala Berang. The land is in the Malay Reservation area and is planted with rubber. The area of the land is seven acres. The land had been acquired by the government and the date for consideration of the market value is 29 January 1981. The land is one of several parcels of land scheduled for acquisition under Gazette Notification No 80 dated 29 January 1981 pursuant to s 8 of the Land Acquisition Act 1960 ('the said Act'). The acquisition was declared for 'a store site for the Public Works Department, Hulu Terengganu'. It is clear that the market value to be determined in respect of the land is the market value as at 29 January 1981.

The government valuer used for comparison several parcels of land in the same district, which had been acquired by the government and for which compensation had been awarded to the proprietors of the lands. After making the analysis, the government paid compensation of $4,800 per acre to the appellant.

The appellant referred the compensation to the High Court, Kuala Terengganu, under the said Act so that the compensation may be reviewed as in his view the compensation is too low. A great deal of submissions was made by the appellant but basically he protests against the rejection of the two parcels of land as the basis of comparison, viz lot 8 and lot 454 in the same district as evidence of the true market value for the land.

Lot 8 was transacted at the price of $19,500 per acre on 20 January 1981 (see the agreement on p 69, appeal record). Lot 454 was transacted at the price of $17,422 per acre in the month of February 1981. After the date of notification of acquisition, lot 454 was awarded compensation of $23,000 per acre which the judge disagreed in a separate reference (see p 62 of the appeal record).

After considering the submissions of both the parties, the High Court of Kuala Terengganu determined that the true and fair market value of the subject land of this reference is at the rate of $7,000 per acre. That court was of the opinion that the application of the appellant to increase the compensation to the rate of $16,000 per acre was too high and totally unreasonable. Accordingly, the court increased the compensation of $4,800 per acre awarded by the government to $7,000 per acre.

In his grounds of judgment, the judge rejected the comparison of the two parcels of land lot 8 and lot 454 in the same district. The rejection is explained in the grounds of judgment at p 14 of the appeal record as follows:

> We are of the opinion that the purchase price for lot 8 purchased by YAM Tengku Paduka Raja Terengganu (witness 3 for applicant) for the purpose of a barite factory cannot be accepted as comparison and we agree that he had purchased the said land as a special purchaser. As regards lot 454, as we have decided in the cases previous to the present one, the purchase of the said land (lot 454) by Dato' Salleh bin Ismail, former President of the State Assembly, Terengganu, at the time the said land was about to be acquired by the government is very much to be doubted. [Translated from Bahasa Malaysia.]

At the end of the reference proceedings, the judge noted in the notes of proceedings as follows:

> With the concurrence of the two assessors, I order that the award for the subject lot shall be $7,0000 per acre.
>
> The applicant and respondent shall pay the allowances of the assessors in equal shares. No order as to other costs.
>
> Deposit paid by the applicant shall be returned after deducting the share of the allowances for the assessors. [Original English text.]

Several issues were raised in this appeal by the appellant as submissions for setting aside the compensation determined by the High Court. In fact, these issues may be divided into three classifications: first, the appellant is dissatisfied with the grounds given by the High Court for rejecting the comparison of value of the said lot 8 and lot 454; second, it is the view of the applicant that the judge had failed to exercise his discretion to award interest under s 48 of the said Act; and third, the appellant is dissatisfied with the order to pay the costs of the assessors in the reference.

The foundation of submissions of the appellant concerning the rejection of the comparison of the lot 8 rests squarely on the evidence given by the purchaser of that land, that is the applicant's third witness, YAM Tengku Sri Paduka Raja Tengku Ibrahim ibni Almarhum Sultan Ismail Nasiruddin Shah. It is not disputed that this witness purchased the land lot 8 on 20 January 1981 and in his affidavit dated 18 January 1989 he stated:

> The purchase was a normal purchase and I am of the opinion it was a fair and reasonable price. [Original English text.]

In his evidence in court he also stated:

> Before I purchased the land I had made investigations into the prices of neighbouring lands. I found that the price of the land purchased by me is the lowest at that time. [Translated from Bahasa Malaysia.]

What was meant by the judge of the High Court in his grounds of judgment is that after viewing the purchase of the lot 8 as a whole the court was of the opinion that the purchase of the lot 8 is a special purchase for the specific purpose of the construction of a factory for processing barite brought from the States of Kelantan and Pahang. It is also clear that the purchaser is a man of influence because he is of royal descent and there is evidence that he was successful in changing the condition of that land expeditiously. He also made application to make the land freehold and excluded from Malay Reservation. Accordingly, we are of the opinion that the judge of the High Court did not err in regarding the purchase of the land lot 8 as a special purchase for a specific purpose and that its price cannot be used for comparison.

The purchaser of a land intended for a specific purpose and possessing special features only for himself cannot be considered a normal purchaser. For instance, a person intending to purchase a piece of land specially for the construction of a petrol filling station will be willing to pay a high price for that purpose. In such a matter, the court cannot take into account the value given by such a purchaser. In other words, the purchase cannot be said to be a normal purchase. In the case of *Re Lucas and Chesterfield Gas and Water Board*[1] at p 31, Fletcher Moulton LJ has somewhat dealt with the problem arising out of the question of a special purchase. He states:

> But when the special value exists also for other possible purchasers, so that there is, so to speak, a market, real though limited, in which that special value goes towards fixing the market price, the owner is entitled to have this element of value taken into consideration, just as he would be entitled to have the fertility or the aspect of a piece of land capable of being used for agricultural purposes. [Original English text.]

On the material date, the appellant's land was agricultural land, fully covered with undergrowth. The land is situated at the rear part with no access road although there is a reserved road. The reserved road leading to the land from the main road is in the planning stage for implementation after the acquisition of the land.

As regards the comparison with land lot 454, we think that the comparison can easily be rejected because the compensation was awarded after the date of notification of acquisition and that land is far away from the relevant land, and further that land is located in the area of Ajil town. Another factor is that the said lot has been proposed for housing land. Finally, that land is by the road side with road frontage, unlike the appellant's land.

Compensation for the lots in the same locality acquired by the government had been paid and no appeals have been filed by the proprietors of the lands concerned. The highest value for comparison among those lots is $6,000 per acre, ie lot 270 and lot 972 acquired in the month of August 1980.

Considering the circumstances as a whole we are of the opinion that the compensation ($7,000 per acre) awarded by the High Court, Kuala Terengganu, ought not to be set aside. Accordingly, the appeal concerning compensation is dismissed.

In respect of the appeal concerning the question of interest, we see from the notes of proceedings of the judge that he had totally failed to exercise his discretion whether or not to order the payment of interest. Accordingly we are of the view that he had failed to exercise his discretion and we therefore order that interest be paid to the appellant at the rate of 6% pa from the date of acquisition up to 19 January 1984 (that is the date of amendment to s 48 of the said Act) and 8% pa from 20 January 1984 until the date of payment. Accordingly the appeal concerning interest is allowed.

The judge has the discretion in respect of the question of costs according to s 51 of the Land Acquisition Act 1960, in particular according to s 51(1)(c) when the claim exceeds 20% or more the amount of the court award. Therefore the appeal concerning costs is dismissed.

In view of the above decisions, it is hereby directed that the appellant pay half of the taxed costs. Deposit to the respondent following taxation.

Order accordingly.

Solicitors: *Wan Abdul Muttalib & Co.*

Judgment translated by *Wong Kim Fatt*